

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

NATIONAL HOT ROD ASSOCIATION)	
(NHRA),)	
)	
Employer,)	Case No.: 22-RC-186622
)	
and)	
)	
INTERNATIONAL ALLIANCE OF)	
THEATRICAL STAGE EMPLOYEES,)	
(LATSE))	
)	
Petitioner.)	

**EMPLOYER’S REQUEST FOR SPECIAL PERMISSION TO APPEAL THE
REGIONAL DIRECTOR’S ORDER DENYING THE EMPLOYER’S MOTION FOR
RECONSIDERATION OF AND WITHDRAWAL FROM STIPULATED ELECTION
AGREEMENT UNDER *PCC STRUCTURALS, INC.***

Pursuant to Section 102.26 of the National Labor Relations Board’s Rules and Regulations, the National Hot Rod Association (“NHRA” or the “Employer”) hereby requests special permission to appeal the attached Order of the Regional Director denying the Employer’s Motion for Reconsideration of and Withdrawal from the Stipulated Election Agreement (the “Order”). The sole issued raised to the Board by way of this request is whether the Regional Director correctly determined that *PCC Structurals, Inc.*, 365 NLRB No. 160 (December 15, 2017) had no impact on the appropriateness of the bargaining unit in this case.

Permission to appeal is warranted because *PCC Structurals, Inc.* impacts the appropriateness of the bargaining unit, and there is a sufficient basis to find that applying *PCC Structurals* compels a different outcome with regard to the appropriate unit in the matter. Specifically, the Region’s Hearing Officer relied on the *Specialty Healthcare* rule overturned in *PCC Structurals* to exclude approximately 150 employees from exercising their Section 7 rights

to participate in the election. The Hearing Officer accomplished this by urging the Employer to either (1) accept a condition that employees in the petitioned-for unit must have worked at least two events and 40 cumulative hours for the Employer to vote in the election, or (2) face application of the *Specialty Healthcare* standard and almost certain approval of the Union's smaller petitioned-for unit of 60 employees, which had omitted a job classification that the Employer sought to add to the unit. Recognizing the nearly impossible burden of proving that the Employer's sought-after excluded employees shared an overwhelming community of interest with those inside the petitioned-for unit, the Employer acquiesced to the condition. However, the Employer would not have acquiesced to the condition without the threat to impose the *Specialty Healthcare* standard relied upon by the Hearing Officer. Because the Board has since overturned the *Specialty Healthcare* standard, the Employer should be entitled to withdraw from the Stipulated Election Agreement and revisit the appropriateness of the unit in light of the principles and policy considerations set forth in *PCC Structurals*.

This request is based upon **Exhibit A**, which is a copy of the Regional Director's Order. The Employer's Motion and the Petitioner's Response are attached thereto. This request is also based upon **Exhibit B**, which is the Notice to Show Cause issued by the Regional Director that initiated the reconsideration of the bargaining unit in this matter under *PCC Structurals, Inc.*

BACKGROUND

1. The Employer is the largest automotive racing organization in the world, and it is responsible for setting the rules in the drag racing sport and hosting racing events throughout the United States. In approximately mid-February 2016, the Employer began producing its own live and recorded productions of its 24 annual racing events in the United States. To do this, the Employer established an in-house television broadcasting department to oversee and produce the

televised content for distribution. The broadcasts are unique in that they are produced from 24 large professional events that occur in cities around the country, including in Charlotte, North Carolina; St. Louis, Missouri; Reading, Pennsylvania; Dallas, Texas; Las Vegas, Nevada; and Indianapolis, Indiana, among other cities. The locations of the races are mostly static from year to year and are based on the locations of the race tracks. The events typically last two to four days. To staff the television production operation at each race, the NHRA typically hires broadcast technicians who reside in or near a city where a race is being held. These employees then work the particular event for one or more days as event workers and then are technically laid off until next season or the next race in that particular city. In most cases, a broadcast technician works one or two events near his or her home and then does not continue to work at other shows during the rest of the race season. That same technician can, however, typically return from season to season to once again work at subsequent NHRA racing events.

2. On October 20, 2016, the Petitioner filed a Petition for Representation, seeking to represent “[a]ll broadcast technicians employed by NHRA including technical directors, creative directors, assistant directors, assistant producers, camera operators (stationary, hand held and/or remotely operated camera), audio technicians (A1), audio assistants (e.g., Sub Mixers, A2), replay producers, videotape operators, digital recording device operators (e.g., EVS), video technicians, video technician assistants, graphics operators, graphics coordinators; bug operators, utility technicians, stage managers, and others in similar technical positions performing work.” (Copy attached as Attachment 1 to the Regional Director’s Order.)

3. On October 27, 2016, the Employer filed its Statement of Position, which sought, in relevant part, to add employees in the RNR Runner¹ classification to the Union's petitioned-for unit. (Copy attached as Attachment 2 to the Regional Director's Order.) In addition, the Employer argued that employees in the petitioned-for unit who worked at least one NHRA event over the preceding one-year period must be eligible to vote, thereby increasing the number of employees in the proposed unit from 60 employees to 257 employees. The Employer explained that there were special circumstances to justify this condition, namely (1) the nature of the NHRA's regional, seasonal television broadcast operations and (2) the majority of employees in the petitioned-for unit work intermittently for the NHRA (i.e., only one or more events per season) based on their proximity to a particular NHRA race but have an expectation of future employment with the NHRA from year to year and share a sufficient community of interest with other broadcast technicians who worked more than a couple of events to be deemed eligible to vote.

4. On November 2, 2016, at the pre-election hearing, the parties met with Hearing Officer Eric Pomianowski of Region 22 in Newark, New Jersey to discuss the appropriateness of the unit and the Employer's proposed one-event condition. The unit petitioned for by the Union consisted of approximately 60 employees. The Employer's position was that the unit must include the additional job classification of RNR Runner and must include employees who worked at least one Employer event over the preceding one-year period, consisting of 257 employees overall. Mr. Pomianowski told the undersigned that unless the Employer agreed to the condition that employees

¹ RNR Runners are the most junior employees working in the Employer's television production department. RNR Runners perform odd jobs such as fetching and carrying audio and video equipment or food service, and they are functionally integrated with other broadcast technician employees, working under the same conditions and reporting to the same producers and directors as other employees in the department (i.e., supervisors). Further, both broadcast technicians and RNR Runners are paid hourly; receive similar benefits; work similar shifts per season; and are subject to the same employer policies.

in the all of job classifications at issue worked at least two racing events in the 2016 racing season and worked a cumulative total of 40 hours during the 2016 racing season, he would revert to the *Specialty Healthcare* standard and approve the Union's petitioned-for unit of 60 employees, which had excluded the Employer's sought-after RNR Runner job classification.

5. On November 3, 2016, the Acting Regional Director approved the Stipulated Election Agreement, which included the Employer's desired RNR Runner classification, but mandated that employees in the agreed-upon job classifications have worked at least two racing events in the 2016 racing season and worked a cumulative total of 40 hours during the 2016 racing season to participate in the election. The Stipulated Election Agreement defined the bargaining unit as follows:

All broadcast technicians employed by NHRA including technical directors, creative directors, assistant directors, assistant producers, camera operators (stationary, hand held and/or remotely operated camera), audio technicians (A1), audio assistants (e.g., Sub Mixers, A2), replay producers, videotape operators, digital recording device operators (e.g., EVS), video technicians, video technician assistants, graphics operators, graphics coordinators, bug operators, utility technicians, stage managers, and other in similar technical positions performing work, including pre-production, production and post-production, in connection with the telecasting of live or recorded automobile racing events at remote locations; but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

It further provided that "[t]hose eligible to vote are all employees in the bargaining unit classifications who have been employed by the Employer during two events for a total of 40 or more working hours over the 2016 racing season." On November 8, 2016, the Regional Director issued the operative Notice of Election.

6. Between November 15 and December 2, 2016, the election was conducted by mail ballot. Votes were counted in December 2016 with sufficient challenges affecting the outcome of

the election. On August 16, 2017, following withdrawal of the Union's challenges, a second vote count was held resulting in a tally of 35 votes for the Petitioner, 34 votes against the Petitioner and two Board challenged ballots. Since the challenges were sufficient, the Union was not certified.

7. Following the close of the mail ballot election period, the Union filed several Unfair Labor Practices and the Employer filed Objections to the Conduct of the Election. The ULPs and Objections were consolidated and the trial is pending before the Hon. Judge Benjamin Green at Region 29 in Brooklyn, New York.

8. On February 2, 2018, Regional Director David E. Leach III of Regional 22 issued a Notice to Show Cause on whether the appropriateness of the bargaining unit in this case is impacted by the Board's recent decision in *PCC Structural, Inc.*, 365 NLRB No. 160 (December 15, 2017). In his Notice, the Regional Director invited the parties to present an offer of proof and identify the community-of-interest factors that would lead to a different definition of the bargaining unit than the one set forth in the Stipulated Election Agreement. On February 16, 2018, the Employer and the Union filed their Responses to the Notice to Show Cause.

9. On February 22, 2018, the Regional Director issued his Order denying the Employer's Motion for Reconsideration of and Withdrawal from Stipulated Election Agreement, which is attached hereto as **Exhibit A**. The Regional Director found that the Employer's Motion failed to "raise a sufficient basis to undo the approved Stipulated Election Agreement" and that the imposition of the two-event and 40-hours-worked eligibility standard was not arbitrary or irrational under the Board's decision in *The Juilliard School*, 208 NLRB 153 (1974). Order at 3-4.

ARGUMENT

I. Review Should Be Granted Because the Regional Director Incorrectly Determined that *PCC Structurals* Had No Impact on the Bargaining Unit.

In *PCC Structurals*, 365 NLRB No. 160, the Board overturned its decision in *Specialty Healthcare*, 357 NLRB No. 83 (2011), reinstating the traditional community-of-interest standard for determining the appropriateness of a petitioned-for bargaining unit. Under the reinstated standard, the Board found that it is required to weigh both the shared and distinct interests of petitioned-for and excluded employees, and that at no point does the burden ever shift to the employer to show an overwhelming community of interest between the excluded and petitioned-for employees. 365 NLRB No. 160, slip op. at 11. As stated by the Board in *PCC Structurals*, “the LMRA also amended Section 9(b) to state – as it presently does – that the Board shall make bargaining unit determinations ‘in each case’ in ‘order to assure to employees the fullest freedom in exercising the rights guaranteed by [the] Act.’” *Id.* at 4. The Board further stated that “[i]t is also well established that the Board may not certify petitioned for units that are ‘arbitrary’ or ‘irrational’ – for example, where functional integration and similarities between two employee groups ‘are such that neither group can be said to have any separate community of interest justifying a separate bargaining unit.’” *Id.* at 5.

Here, the Regional Director wrongly concluded that there is no sufficient basis for the Employer to withdraw from the Stipulated Election Agreement under *PCC Structurals*. As the Employer explained in its Motion, the Region’s Hearing Officer relied on the now-overturned *Specialty Healthcare* rule to pressure the Employer to agree to a condition that employees in the unit must have worked at least two events for a total of 40 cumulative hours for the Employer to vote. At the November 2, 2016 pre-election hearing, the parties met with Hearing Officer Pomianowski and discussed the appropriateness of the unit. The unit petitioned for by the Union

consisted of approximately 60 employees and excluded the Employer's desired RNR Runner classification. The Employer's position was that the unit consisted of approximately 257 employees and included employees in the RNR Runner classification and all of those employees who had worked at least one racing event for the Employer in the 2016 racing season.

Mr. Pomianowski told the Employer's counsel that unless the Employer agreed to the condition that employees in the job classifications worked at least two racing events in the 2016 racing season and worked a cumulative total of 40 hours during the 2016 racing season, he would revert to the *Specialty Healthcare* standard and approve of the Union's smaller petitioned for unit of 60 employees that had excluded the Employer's desired RNR Runner classification from the unit. Faced with the heightened burden of attempting to demonstrate that excluded RNR Runner employees shared an overwhelming community of interest with those in Union's petitioned-for unit under *Specialty Healthcare*, the Employer consented to the two-event and 40-hours-worked condition. As a result, the interests of about 150 employees who worked for the Employer for one event and fewer than 40 hours were not carefully considered, and they were excluded from voting in the election, although they undoubtedly shared and continue to share a community of interest with the included employees. Specifically, the excluded employees have a community of interest with the included employees as to the following matters:

1. They all are offered and sign job memos describing their terms and conditions of employment.
2. They all are covered by the same Employee Handbook and the same personnel policies.
3. They all work under the same supervision as the included employees.
4. They all work as part of a functionally integrated unit (i.e., the NHRA's broadcast television department).

5. There is overlap and interchange between the employees in the various job classifications.
6. They have an expectation of continued employment from racing season to racing season and many in fact work successive seasons.
7. They receive the same benefits (per diem, rental cars, meals and any other benefits).
8. They all work in the same department (i.e., television production).
9. They all work similar shifts.

Thus, the Hearing Officer used the fact that the *Specialty Healthcare* rule gave controlling weight to Union's petitioned-for unit to extract a two-event and 40-hours-worked requirement as a concession from the Employer in this case and disenfranchise a majority of employees in the election.

Moreover, the Region did not meaningfully evaluate whether the employees excluded from the Union's petitioned-for unit belonged inside the unit, or whether the imposition of two-event and 40-hours-worked requirement adequately ensured employees their fullest freedom in the exercise of their Section 7 rights. Instead, the Hearing Officer compelled the Employer to agree to a condition or likely face the exclusion of the RNR Runner job classification altogether. Indeed, by overturning *Specialty Healthcare*, the Board sought to avoid that the sort of scenario that ensued here, namely that no meaningful analysis of the interests of employees excluded from that unit would occur and that the imbalanced *Specialty Healthcare* standard would force an employer to agree to condition limiting the scope of the voter pool or face moving forward with the Union's preferred, smaller petitioned-for unit:

Specialty Healthcare gives all-but-conclusive deference to every petitioned-for "subdivision" unit, without attaching *any* weight to the interests of excluded employees in potential "employer," "craft," "plant," or alternative "subdivision" units, unless the employer proves the existence of "overwhelming" interests shared between petitioned-for employees and those outside the petitioned-for

“subdivision.” The discrepancy between what Section 9(b) requires, on the one hand, and what *Specialty Healthcare* precludes, on the other, is reinforced by Section 9(c)(5), added to the Act in 1947, where Congress expressly states that “[i]n determining whether a unit is appropriate . . . the extent to which the employees have organized shall not be controlling.” We believe *Specialty Healthcare* effectively makes the extent of union organizing “controlling,” or at the very least gives far greater weight to that factor than statutory policy warrants . . .

PCC Structurals, 365 NLRB No. 160, slip op. at 6-7. These circumstances are a sufficient basis for allowing the Employer to withdraw from the Stipulated Election Agreement because without the existence of the *Specialty Healthcare* rule the Employer would not have acquiesced to the Hearing Officer’s condition. Accordingly, the NHRA should be entitled to withdraw from the Stipulated Election agreement and revisit the appropriateness of the unit. The Regional Director’s Order deciding that the above did not provide a sufficient basis for allowing the Employer to withdraw from the Stipulated Election Agreement is incorrect and should be reversed.

II. Review Should Be Granted Because the Regional Director’s Conclusion that the Two-Event, 40-Hours-Worked Standard Was Not Arbitrary and Irrational Is Erroneous.

Moreover, as part of his Order, the Regional Director also found that the Region’s imposition of the two-event, 40-hours-worked voter eligibility requirement was not arbitrary or irrational, relying on the Board’s decision in *The Juilliard School* (“*Juilliard*”), 208 NLRB 153 (1974). However, *Juilliard* is distinguishable and in the context of this case, the two event, 40-hours-worked standard is arbitrary and irrational because it operated to exclude 150 employees from voting in the election without any sufficient reason grounded in the Act.

NHRA’s television broadcasts are unique, even among productions in the sports and entertainment industry, in that they are produced from 24 large professional events, one or twice a month, that occur in cities around the country. To staff the television production operation at each race, the NHRA typically hires broadcast technicians who reside in or near a city where a race is

being held. These employees then work the particular event for one or more days as event workers and then are technically laid off until next season or the next race in that particular city. In most cases, a broadcast technician works one or two events near his or her home and then does not continue to work at other shows during the rest of the race season. That same technician can, however, typically return from season to season to once again work at the NHRA races. This working arrangement means that a large group of NHRA's broadcast technician employees work only one or two days per year for fewer than 40 hours, but can return from year to year to work from the same race. Because that is the case, requiring that employees to have worked at least two events and 40 hours to vote in this election was arbitrary and irrational because it did not align with the majority of the voting population.

The Regional Director found that the voter eligibility formula used here was not arbitrary or irrational under the Board's decision in *Juilliard* because in that case the Board approved of a formula that allowed employees who worked two productions for a total of 5 days over a one-year period or at least 15 days over a two-year period to vote, and that formula "is similar to the one involved herein, and . . . has been applied by the Board in numerous cases thereafter." Order at 3. However, in *Juilliard*, the Employer operated musical, operatic, dramatic and dance production in one location, New York City, and it hired groups of temporary employees from the same labor pool to assist on these production for a few productions each year that ran for three or four performances at most. Under these circumstances, the Board concluded that a formula that grants "voting eligibility to all employees who have been employed by the Employer during two productions for a total of 5 working days over a 1-year period, or who have been employed by the Employer for at least 15 days over a 2-year period" would be the most useful. *Juilliard*, 208 NLRB at 155.

However, unlike in *Juilliard*, here, the NHRA's productions travel around the country, and there are a static number of NHRA race events each year (*i.e.*, 24) for which the Employer hires event workers who typically live in close proximity to the event itself, as opposed to the Juilliard productions which were fewer in number overall but varied from year to year, were likely for more workdays overall, and for which Juilliard hired from the same labor pool in New York City rather than cities around the United States. *See Juilliard*, 208 NLRB at 154 ("Juilliard stages relatively few productions each year which run for three or four performances at the most."). The fact that the NHRA productions move around the country means that the NHRA hires from a smaller labor pool and that there are fewer opportunities to work for the NHRA in any given year. Thus, the two-event and 40-hour requirement did not adequately measure who should be eligible to vote because over a majority of the voters were excluded from participating in the election once this eligibility requirement was applied. Under these circumstances, it cannot be said that the two event, 40-hours-worked standard is not arbitrary and irrational.

The NHRA should be permitted to revisit the eligibility standard in this case to determine whether it properly represented the employees who will be impacted by the results of the election.

CONCLUSION

For all of the reasons set forth above, the Employer requests special permission to appeal the Regional Director's Order denying its Motion for Reconsideration of and Withdraw from the Stipulated Election Agreement. The Employer further requests that it be permitted to withdraw from the Stipulated Election Agreement, have the record in the representation matter reopened, and have an analysis of the appropriate unit under *PCC Structurals* be conducted.

Respectfully submitted this 7th day of March 2018.



Daniel P. Murphy
Counsel for the Employer
CONSTANGY, BROOKS, SMITH &
PROPHETE, LLP
230 Peachtree Street, NW, Suite 2400
Atlanta, Georgia 30303
(404) 230-6764
(404) 525-6955 (Fax)
dmurphy@constangy.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Employer's Request for Special Permission to Appeal the Regional Director's Order Denying the Employer's Motion for Reconsideration of and Withdrawal from Stipulated Election Agreement Under *PCC Structural, Inc.* has been filed with National Labor Relations Board by the Board's official E-File system and served by e-mail on:

David E. Leach III
Regional Director
National Labor Relations Board, Region 22
david.leach@nrlrb.gov

Kathy Drew-King
Regional Director
National Labor Relations Board, Region 29
Brooklyn, NY 11201-4201
kathy.king@nrlrb.gov

Evamaria Cox
Field Attorney
National Labor Relations Board, Region 29
evamaria.cox@nrlrb.gov

Adrian D. Healy
Attorney for Charging Party
I.A.T.S.E.
ahealy@iatse.net

Dated this 7th day of March 2018.


Daniel P. Murphy
Counsel for the Employer

EXHIBIT A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

**National Hot Rod Association (NHRA)
Employer**

and

Case 22-RC-186622

**International Alliance of Theatrical Stage Employees
(IATSE)
Petitioner**

**ORDER DENYING EMPLOYER'S MOTION
FOR RECONSIDERATION OF AND WITHDRAWAL FROM
STIPULATED ELECTION AGREEMENT**

On November 3, 2016, the Acting Regional Director approved a stipulated election agreement ("Agreement") in the above-captioned case and a mail ballot election was thereafter conducted. The matter is currently in the post-election phase and the determinative challenged ballots and the Employer's election objections have been consolidated with various unfair labor practice charges filed by the Petitioner. A hearing before an Administrative Law Judge has been opened and is not yet completed.

On December 15, 2017, the Board issued its decision in *PCC Structurals, Inc.*, 365 NLRB No. 160, overruling *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), concerning the standard for determining whether a proposed bargaining unit constitutes an appropriate unit for collective bargaining when a party contends that the smallest appropriate unit must include additional employees.

On February 2, 2018, the undersigned issued a Notice to Show Cause whether the appropriateness of the bargaining unit in this matter is impacted by the Board's decision in *PCC*

Structurals, and inviting the parties to submit responses addressing whether unusual circumstances exist to warrant allowing either party to withdraw from the Agreement.

Specifically, the parties were instructed that any response to the Notice to Show Cause must address whether the appropriateness of the bargaining unit in this case is impacted by the Board's recent decision in *PCC Structurals, Inc.* Further, any party which answers this question in the affirmative was required to submit an offer of proof, identifying any facts regarding community-of-interest factors that would lead to a different description of the bargaining unit than that set forth in the present stipulated agreement. Finally, the parties were instructed that the offer of proof must identify with significant specificity those community of interest factors relied upon to show that the stipulated unit is not sufficiently distinct from another employee group such that it should be rendered inappropriate.

In response to the Notice to Show Cause, on February 16, 2018, the Employer filed a Motion for Reconsideration of Stipulated Election Agreement ("Motion"), attached hereto, wherein it contends that it should be permitted to withdraw from the approved Agreement based on its contention that application of an analysis in accordance with the Board's decision in *Specialty Healthcare* compelled the Employer to enter into a Stipulated Election Agreement that included an agreed-upon appropriate bargaining unit that was coextensive with the petitioned-for unit with some minor alterations. In its Motion, the Employer asserts that at the time of the election (and currently), there existed excluded employees, or job classifications, whom it argues should have been included with the stipulated and included unit employees based on their shared community of interest. The Employer cites several traditional community of interest factors in support of its position.

Petitioner filed a Response to the Notice to Show Cause, attached hereto, wherein it contends that the requisite "unusual circumstances" do not exist that would privilege either party to withdraw from the Stipulated Election Agreement in this matter.

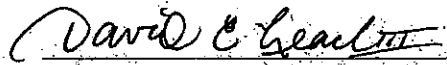
I have carefully reviewed and considered the parties' submissions and I have determined that the Employer's Motion fails to raise a sufficient basis to undo the approved Stipulated Election Agreement. The Employer essentially contends that under the strictures of *Specialty Healthcare*, it was essentially precluded from taking issue with the petitioned-for bargaining unit and that the standards for determining the appropriate bargaining unit articulated by the Board in its more recent decision in *PCC Structural*s would necessarily result in a different outcome. I disagree. The bargaining unit herein consisted of all broadcast technicians employed by the Employer in connection with the telecasting of live or recorded automobile racing events at remote locations who have been employed by the Employer during two events for a total of 40 or more working hours over the 2016 racing season.

The Employer also contends that the imposition of the two racing event and 40 hours worked standard is both arbitrary and irrational and, thus, it should be permitted to withdraw from the Agreement and to revisit the issue of the appropriate collective bargaining unit. However, in *Julliard School*, 208 NLRB 152 (1974), a similar case involving stage department employees involved in theatrical productions, the Board constructed a formula "that accords voting eligibility to all employees who have been employed by the Employer during two productions for a total of 5 working days over a 1-year period, or who have been employed by the Employer for at least 15 days over a 2-year period," a formula that is similar to the one involved herein, and that has been applied by the Board in numerous cases thereafter. Based on the foregoing, it cannot be concluded that the eligibility standard in the instant case is both

arbitrary and irrational. Accordingly, I find that there is insufficient basis to permit the Employer to withdraw from the approved Stipulated Election Agreement.

Based on the foregoing, IT IS HEREBY ORDERED that the Employer's Motion to Withdraw from the approved Stipulated Election Agreement is hereby DENIED.

Dated: February 22, 2018.



David E. Leach III, Regional Director
National Labor Relations Board, Region 22
Veterans Administration Building
20 Washington Place, 5th Floor
Newark, New Jersey 07102

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

NATIONAL HOT ROD ASSOCIATION
(NHRA),

Employer.

Case Nos.: 22-RC-186622

and

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES,
(IATSE)

Petitioner.

**RESPONSE TO NOTICE TO SHOW CAUSE AND MOTION FOR
RECONSIDERATION OF STIPULATED ELECTION AGREEMENT**

INTRODUCTION

On February 2, 2017, David E. Leach III, Regional Director for Region 22 issued a Notice to Show Cause whether the appropriateness of the bargaining unit in this case is impacted by the decision in the case of PCC Structurals, Inc., 365 NLRB No. 160. In his Notice, the Regional Director stated that an offer of proof is required identifying community of interest factors that would lead to a different description of the bargaining unit than that set forth in the present stipulated agreement. Any submission or response to the Notice is to be filed in writing with the Regional Director in Region 22, Newark, New Jersey on or before February 16, 2017.

BACKGROUND

The election in this case was conducted by mail ballot between November 15, 2016, and December 2, 2016. Votes were counted in December 2016 with sufficient challenges affecting

the outcome of the election. In August of 2017 following withdrawal of Union challenges a second vote count was held resulting in a tally of 35 votes for the Petitioner, 34 votes against the Petitioner and 2 Board challenged ballots. Since the challenges were sufficient there was no certification.

The Union filed Unfair Labor Practices and the Employer filed Objections to the Conduct of the Election. The ULP's and Objections were consolidated (Case numbers: 02-CA-185569; 22-CA-190227; and 22-CA-192686) and the trial of these matters is scheduled for February 27, 2017, at the Brooklyn, NY office of the NLRB. (The consolidated cases were transferred to Brooklyn when Field Attorney Evamaria Cox was transferred at her request to the Brooklyn office.

The unit description of the bargaining unit as it appears in the Stipulated Election Agreement reads as follows:

All broadcast technicians employed by NHRA including technical directors, creative directors, assistant directors, assistant producers, camera operators (stationary, hand held and/or remotely operated camera), audio technicians (A1), audio assistants (e.g., Sub Mixers, A2), replay producers, videotape operators, digital recording device operators (e.g., EVS), video technicians, video technician assistants, graphics operators, graphics coordinators, bug operators, utility technicians, stage managers, and other in similar technical positions performing work, including pre-production, production and post-production, in connection with the telecasting of live or recorded automobile racing events at remote locations; but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

At the hearing in November 2016, the parties met with Hearing Officer, Eric Pomianowski, and discussed the appropriateness of the unit. The unit petitioned for by the Union consisted of approximately 60 employees. The Employer's position was that the unit consisted of approximately 257 employees. Mr. Pomianowski told the undersigned that unless the Employer agreed to the conditions that employees in the agreed upon job classifications or job descriptions worked at least two (2) racing events in the 2016 racing season AND worked a cumulative total of

forty (40) hours during the 2016 racing season he would revert to the Specialty Healthcare standard and approve the petitioned for unit of approximately 60 employees. In so doing, Mr. Pomianowski effectively disenfranchised approximately one-hundred and fifty employees who shared (and still share) a community of interest with the 99 employees who were ultimately eligible to vote.

APPLICATION OF PCC STRUCTURALS TO THE INSTANT CASE

As stated by the Board in PCC Structurals (supra.), "Finally, the LMRA also amended Section 9(b) to state--as it presently does--that the Board shall make bargaining unit determinations 'in each case' in 'order to assure to employees the fullest freedom in exercising the rights guaranteed by [the] Act.'" The Board also stated in PCC Structurals that "It is also well established that the Board may not certify petitioned for units that are 'arbitrary' or 'irrational' --for example, where functional integration and similarities between two employee groups 'are such that neither group can be said to have any separate community of interest justifying a separate bargaining unit.'" The Board also emphasized in that case that Congress intended that the Board "in each case" would carefully consider the interests of all employees.

Clearly, as will be shown in the offer of proof section of this submission, the interests of one hundred and fifty employees were not carefully considered. Moreover, the imposition of the 2 racing event and 40 hours worked standard is both arbitrary and irrational.

OFFER OF PROOF

The Employer is prepared to prove that the excluded or disenfranchised employees have a community of interest with the included employees as to the following matters:

1. They are offered and sign job memos describing their terms and conditions of employment.
2. They are covered by the same Employee Handbook and the same personnel policies.
3. They receive the same benefits.
4. They work under the same supervision as the included employees.
5. They work as part of a functionally integrated unit.

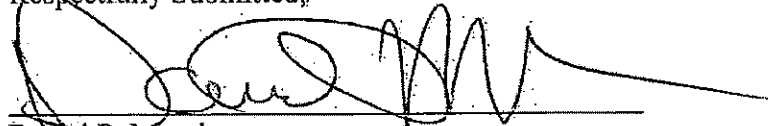
6. There is overlap and interchange between the employees in the various job classifications.
7. They have an expectation of continued employment from racing season to racing season and may in fact work successive seasons.
8. They work in the same department (TV Production).
9. They work the same shifts.

It is important for the Regional Director to know something about the nature of the Employer's operations. NHRA conducts roughly twenty-four racing events each year in cities all across the United States. The locations are mostly static from year to year and are based on the locations of the race tracks. To staff the television production operation at each race, the NHRA typically hires broadcast technicians who reside in or near a city where a race is being held. These employees then work the particular event for one or more days as event workers. In most cases, a broadcast technician works one or two events near his or her home and then does not continue to work at other shows during the rest of the race season. That same technician, however, typically returns from season to season to work at one, two or more NHRA races. Therefore, all broadcast technicians-whether they work one race or more -- have a sufficient regularity of employment with the NHRA. In view of that, and in keeping with PCC Structurals, a unit of broadcast technicians who worked at least one race would assure employees the fullest freedom in exercising the rights guaranteed by the Act. If the current stipulated unit is allowed to stand, imagine a scenario where employees at the same race, doing the same jobs, interchanging with one another, and reporting to the same supervisors, with some covered by a collective bargaining agreement and others not. That quite simply is irrational and will not work.

For all foregoing reasons, the Employer respectfully requests that it be allowed to withdraw from the Stipulated Election Agreement in this case pursuant to RC Case Handling Manual Section 11097.

This 16th day of February, 2018.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Daniel P. Murphy', written over a horizontal line.

Daniel P. Murphy
Counsel for the Employer

CONSTANGY, BROOKS, SMITH &
PROPHETE, LLP
230 Peachtree Street, NW, Suite 2400
Atlanta, Georgia 30303
(404) 230-6764
Fax: (404) 525-6955
dmurphy@constangy.com

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

NATIONAL HOT ROD ASSOCIATION
(NHRA),

Employer

Case Nos.: 22-RC-186622

and

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES,
(IATSE)

Petitioner.

CERTIFICATE OF SERVICE

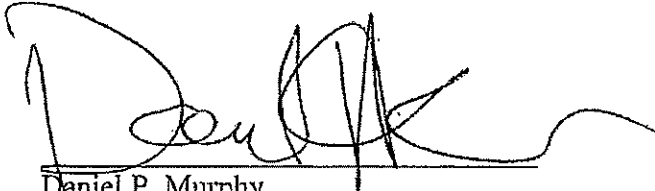
I hereby certify that a copy of the Response to Notice to Show Cause and Motion for Reconsideration of Stipulated Election Agreement has been filed and served with Region 22 of the Board and its Hearing Officer by the NLRB's official E-File system and by regular e-mail to:

Evamaria Cox
(evamaria.cox@nrlrb.gov)

and

Adrian Healy
(ahealy@iatse.net)

This 16th day of February, 2018.


Daniel P. Murphy
Counsel for the Employer

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NATIONAL HOT ROD ASSOCIATION,

Employer,

-and-

INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES
MOVING PICTURE TECHNICIANS,
ARTISTS AND ALLIED CRAFTS OF THE
UNITED STATES, ITS TERRITORIES
AND CANADA, AFL-CIO, CLC

Petitioner.

Case No. 22-RC-186622

**PETITIONER'S RESPONSE TO REGIONAL DIRECTOR'S
NOTICE TO SHOW CAUSE**

On February 2, 2018, the Regional Director for Region 22 issued a Notice to Show Cause why unusual circumstances do not exist to allow either party to withdraw from the stipulated election agreement in the above-captioned case. The Petitioner, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, AFL-CIO, CLC ("IATSE" or "Union") submits this response. For each of the following reasons, and as shown by the parties' previous filings with the Board (hereby incorporated by reference), no circumstances—let alone unusual circumstances—allow the Union or National Hot Rod Association ("NHRA" or "Employer") to withdraw from the stipulated election agreement in this case.

I. BACKGROUND

The Petitioner filed and served its representation petition in this matter on October 20, 2016. The Union sought a bargaining unit of all television broadcast technicians working at remote locations throughout the United States performing pre-production, production, and post-production work on televised drag racing events. A copy of the October 20, 2016 petition is appended hereto as Attachment 1. In response to the petition and in accordance with Section 102.63 of the Rules and Regulations of the National Labor Relations Board ("NLRB"), the Employer submitted and served a Statement of Position dated October 27, 2016. *See* 29 C.F.R. § 102.63. A copy of the Employer's Statement of Position from with attachments is appended hereto as Attachment 2.

In its Statement of Position, the Employer raised three material issues concerning the initially petitioned-for unit. (Att. 2, Att. E at pp. 3-4.) First, it contended that employees working in the "RNR Runner" classification "share an overwhelming community of interest" with the broadcast technicians identified in the petition. (*Id.*) Second, NHRA asserted that it employed no persons as "stage managers," and that classification should be consequently omitted from the unit description. Finally, the Employer objected to the "catch-all" phrase "others in similar technical positions" within the unit description. (*Id.*) This, the Employer claimed, rendered the petitioned-for unit "overly broad and indefinite." (*Id.*)

Prior to the opening of the scheduled pre-election representation hearing on November 2, 2016, the parties entered into a stipulated election agreement (the "Agreement"). The Agreement called for a mail ballot election to be completed with a tally on December 2, 2016. A copy of the stipulated election agreement, which was approved by the Acting Regional Director for

Region 22 on November 3, 2016 is appended hereto as Attachment 3. The parties expressly agreed that the stipulated bargaining unit “is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.” (Att. 3 at p. 1.) The parties further agreed to “waive their right to a hearing and that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board’s Rules and Regulations.” (Att. 3 at p. 1.)

The stipulated unit set forth in the Agreement *includes* the sole classification that the Employer urged inclusion of—“runners (RNR Runner).” (Att. 3 at p. 1.) The stipulated unit also excludes “stage managers,” on the basis that NHRA does not employ stage managers. (*Id.*) Finally, the catch-all phrase, “others in similar technical positions,” that the employer found “overbroad and vague” was removed from the unit description. (*Id.*)¹

At no time since the parties entered into the Agreement on November 2, 2016 has any party raised any issue concerning the appropriateness of the bargaining unit. Other than those identified in its October 27, 2016 Statement of Position, the Employer has not specified any other classifications, individuals, or employee groups that must be added to or excluded from the bargaining unit.

The Region’s February 2, 2018 Notice to Show Cause nonetheless asks the parties to address whether the Board’s decision in *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), impacts upon the appropriateness of the bargaining unit in this case. The Board’s decision in

¹ On September 8, 2017, the Regional Director issued an Order Further Consolidated Cases, Partial Decision on Objections, Order Directing Hearing and Notice of Hearing on Challenged Ballots and Objections, which consolidated further post-election proceedings in 22-RC-186622 with related unfair labor practice cases 02-CA-185569, 22-CA-190221, and 22-CA-192686. The consolidated matter remains pending before an Administrative Law Judge.

*PCC Structural*s has no impact upon the NHRA unit. As described below, the Board's decision in *PCC Structural*s does not produce "unusual circumstances" that would justify withdrawal from the Agreement. In sum, as discussed below, the parties' Agreement identifies an appropriate bargaining unit in clear and unambiguous terms. Therefore, the agreement must be honored, maintained, and enforced by the Region and the Board.

II. LAW AND ARGUMENT

A. The parties' Agreement describes an appropriate unit and the Agreement must be honored.

The Board has long held that a unit need not be the "most" appropriate or "ultimate" appropriate unit, but must merely be "an" appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723, 723 (1996). Moreover, "[t]he plain language of the Act clearly indicates that the same employees of an employer may be grouped together for purposes of collective bargaining in more than one appropriate unit." *Id.* Here, the NHRA employees undoubtedly constitute an appropriate unit. As described above, the unit includes all NHRA remote television production technicians working on-site at sporting event locations. The unit is a readily identifiable and functionally distinct group of NHRA employees. Unit employees share a community of interest under the Board's traditional criteria. The employees in the stipulated unit have been subject the same rules, policies, and general conditions. They share common supervision and work similar hours. All unit employees share a common work situs and there is significant interaction among them. The work of all unit employees is functionally related. Individuals in the unit all work together to produce live or recorded racing events for television. All classifications in the stipulated unit are thus codependent and the unit is appropriate under the Board's historic community-of-interest factors. *E.g., United Operations*, 338 NLRB 123, 125 (2002).

Under long-standing Board law, stipulated election agreements are regarded as contracts binding on the parties that executed them. *T & L Leasing*, 318 NLRB 324, 325 (1995). They are enforceable provided that their terms “do not contravene expressed statutory exclusions or established Board policy.” *Highlands Regional Medical Center*, 327 NLRB 1049, 1050 (1999). The Board will, “honor concessions made” in election agreements “in the interest of expeditious handling of representation cases even though the Board may have reached a different result upon litigation.” *Id.* See also *Hampton Inn & Suites*, 331 NLRB 238, 238 (2000). In other words, the Board’s function in stipulated unit cases is different from its approach in cases where it is called upon to initially determine the appropriate unit. See *Otis Hospital*, 219 NLRB 164, 166 (1975). Here, as described above, the parties have identified an appropriate unit and so stipulated. Nothing about the stipulated unit contravenes express statutory exclusions or Board policy. Therefore, the Agreement cannot be set aside.

The Board’s decision in *PCC Structural*s does not offer “unusual circumstances” allowing any party’s withdrawal from the Agreement. Even assuming without deciding that the Board might reach a different conclusion than the parties about the appropriateness of the NHRA unit, unwillingly depriving any party of the stipulated unit would disregard existing Board law. E.g., *NLRB v. MEMC Elec. Materials, Inc.*, 363 F.3d 705, 708 (8th Cir. 2004) (“Under [the ‘unusual circumstances’] standard, it is not enough to show that, absent the election agreement, the Board would have defined the appropriate bargaining unit differently”); *Hampton Inn & Suites*, 331 NLRB at 239 (“[A] stipulated unit will not be cast aside solely because it designates a unit we might find inappropriate had resolution of the issue not been agreed upon by the parties.”). In these circumstances, the Board’s possible conclusions—upon litigation—about included and excluded employees are irrelevant. *Id.* Thus, the Board’s possible findings about

the stipulated unit (whether made *before or after PCC Structural*s) have no bearing upon the enforceability of the Agreement. The parties' Agreement must be honored.

B. The stipulated unit incorporates the sole classification that the Employer identified inclusion in the initial petitioned-for unit.

In *PCC Structural*s, the Board overruled the approach previously used by the Board under *Specialty Healthcare* when a party asserts that the smallest appropriate unit must include other employees. See *PCC Structural*s, Inc., 365 NLRB No. 160, slip op. at 7 (“... when it is asserted that the smallest appropriate unit must include employees excluded from the petitioned-for unit, the Board will no longer be constrained by the extraordinary deference that *Specialty Healthcare* affords to the petitioned-for unit.”).

Here, NHRA asserted that only one classification of employees—RNR Runner—should be included in the petitioned-for unit. (See Att. 2.) The Employer has not contended that the smallest appropriate unit should include any other employees. Further, the Agreement excludes the sole group—“stage managers”—which the Employer sought to exclude. Therefore, the approach set forth in *PCC Structural*s has no application here. By acquiescing with the positions taken by the Employer’s Statement of Position, the Petitioner has eliminated further need to consider whether the unit must include or exclude other employees from the petitioned-for unit. The Employer raised no other issues concerning the petitioned-for unit and it would be barred by the NLRB’s Rules and Regulations from doing so now. See 29 C.F.R. § 102.66 (“A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position.”). Therefore, *PCC Structural*s does not impact whatsoever upon the appropriateness of the bargaining unit in this case.

III. CONCLUSION

For the foregoing reasons, the Petitioner respectfully submits, under the circumstances, that the parties' Stipulated Election Agreement must be maintained and enforced. No unusual circumstances exist here that would warrant any party's withdrawal from the Agreement.

Dated: New York, New York
February 16, 2018

Respectfully submitted,

By: /s/ Adrian D. Healy

Adrian D. Healy, Esq.
Attorney for Charging Party
Associate Counsel
I.A.T.S.E.
207 W.25th St. 4th Fl.
New York, NY 10001
Tel. 212-730-1770
ahealy@iatse.net

STATEMENT OF SERVICE

I hereby certify that on February 16, 2018, the foregoing Response to Notice to Show Cause with accompanying Attachments and Exhibits was e-filed with NLRB Region 22 at www.nlr.gov, and sent electronically to the following addresses:

David E. Leach
Regional Director
National Labor Relations Board, Region 22
20 Washington Place, 5th Floor
Newark, NJ 07102-3110
Region22@nlrb.gov

Kathy Drew-King
Regional Director
National Labor Relations Board, Region 29
Two Metro Tech Center
100 Myrtle Avenue, 5th Floor
Brooklyn, NY 11201-4201
Region29@nlrb.gov

Evamaria Cox
Field Attorney
National Labor Relations Board, Region 29
Two Metro Tech Center
100 Myrtle Avenue, 5th Floor
Brooklyn, NY 11201-4201
evamaria.cox@nlrb.gov

Daniel P. Murphy
Constangy, Brooks, Smith & Prophete, LLP
230 Peachtree St., N.W., Suite 2400
Atlanta, GA 30303-1557
DMurphy@constangy.com

By: /s/ Adrian D. Healy

Adrian D. Healy, Esq.

Dated this 16th day of February 2018

ATTACHMENT 1

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RC PETITION

DO NOT WRITE IN THIS SPACE

Case No. 22-RC-186622 Date Filed OCT 20, 2016

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer: National Hot Rod Association (NHRA) 2b. Address(es) of Establishment(s) involved (Street and number, city, state, ZIP code): 2035 E Financial Way Glendora, CA 91741-4602

3a. Employer Representative - Name and Title: Ken Adelson, NHRA Vice President & Executive Producer 3b. Address (if same as 2b - state same): SAME

3c. Tel. No.: 310-369-2626 3d. Cell No.: 3e. Fax No.: 3f. E-Mail Address: kadelson@nhra.com

4a. Type of Establishment (Factory, mine, wholesaler, etc.): Automobile racing association 4b. Principal product or service: Television broadcasting 5a. City and State where unit is located: Nationwide--remote locations

5b. Description of Unit Involved
Included: SEE ATTACHMENT
Excluded: SEE ATTACHMENT
6a. No. of Employees in Unit: 60
6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? Yes ☒ No ☐

Check One: ☒ 7a. Request for recognition as Bargaining Representative was made on (Date) about 10/15/16 and Employer declined recognition on or about no reply (Date) (if no reply received, so state).
☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent (if none, so state): NONE 8b. Address:

8c. Tel. No.: 8d. Cell No.: 8e. Fax No.: 8f. E-Mail Address:

8g. Affiliation, if any: 8h. Date of Recognition or Certification: 8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year):

9. Is there now a strike or picketing at the Employer's establishment(s) involved? no If so, approximately how many employees are participating? (Name of labor organization) has picketed the Employer since (Month, Day, Year)

10. Organizations or individuals other than Petitioner and those named in Items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in Item 5b above. (if none, so state) NONE

10a. Name: 10b. Address: 10c. Tel. No.: 10d. Cell No.: 10e. Fax No.: 10f. E-Mail Address:

11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election. 11a. Election Type: ☐ Manual ☒ Mail ☐ Mixed Manual/Mail

11b. Election Date(s): 11c. Election Time(s): 11d. Election Location(s):
Ballots dispatched 11/1/16 by mail with three-week deadline for returned ballots by mail

12a. Full Name of Petitioner (including local name and number): International Alliance of Theatrical Stage Employees 12b. Address (street and number, city, state, and ZIP code): 207 W. 25th St. 4th Fl., New York, NY 10001

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state): International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, AFL-CIO

12d. Tel. No.: 212-730-1770 12e. Cell No.: 12f. Fax No.: 212-730-7809 12g. E-Mail Address: shealy@iatse.net

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title: Adrian D. Healy, Esq. Associate Counsel 13b. Address (street and number, city, state, and ZIP code): 207 W. 25th St. 4th Fl., New York, NY 10001

13c. Tel. No.: 212-730-1770 13d. Cell No.: 917-499-9012 13e. Fax No.: 212-730-7809 13f. E-Mail Address: shealy@iatse.net

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print): Adrian D. Healy Signature: Title: Assoc. Counsel Date: October 20, 2016

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

ATTACHMENT

All broadcast technicians employed by NHRA including technical directors, creative directors, assistant directors, assistant producers, camera operators (stationary, hand held and/or remotely operated camera), audio technicians (A1), audio assistants (e.g., Sub Mixers, A2), replay producers, videotape operators, digital recording device operators (e.g., EVS), video technicians, video technician assistants, graphics operators, graphics coordinators, bug operators, utility technicians, stage managers, and others in similar technical positions performing work, including pre-production, production and post-production, in connection with the telecasting of live or recorded automobile racing events at remote locations; but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

.

ATTACHMENT 2

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE

Case No.
22-RC-188822

Date Filed

INSTRUCTIONS: Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.
Note: Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below.

1a. Full name of party filing Statement of Position
National Hot Rod Association (NHRA)

1c. Business Phone:
(626) 914-4761

1e. Fax No.:
(626) 963-5360

1b. Address (Street and number, city, state, and ZIP code)
2035 Financial Way, Glendora, CA 91741

1d. Cell No.:
Counsel: (310) 600-1153

1f. e-Mail Address
Counsel: ksulzer@constangy.com

2. Do you agree that the NLRB has jurisdiction over the Employer in this case? ☒ Yes ☐ No
(A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)

3. Do you agree that the proposed unit is appropriate? ☐ Yes ☒ No (If not, answer 3a and 3b.)

a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards.)

Other employees share an overwhelming community of interest with the proposed unit and the unit is inappropriate without the other employees included. (See Attachment E)

b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.
Added

RNR Runner classification

Excluded
Stage managers, other similar technical positions in pre-production, production and post-production

4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.

See Attachment E

5. Is there a bar to conducting an election in this case? ☒ Yes ☐ No If yes, state the basis for your position.

The Region failed to provide timely notice of the petition and other necessary documents as required by Section 102.63(a) of the Board's Rules and Regulations.

6. Describe all other issues you intend to raise at the pre-election hearing.

Proper voter eligibility formula and showing of interest thereunder; description of the unit; location and date of pre-election hearing; location and date of the election, voting period, and the appropriateness of a mixed manual/mail-ballot election (see Attachment E for additional argument).

7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at <http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015>:

(a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B)

(b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any, to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an

State your position with respect to the details of any election that may be conducted in this matter. 8a. Type: ☐ Manual ☐ Mail ☒ Mixed Manual/Mail

8b. Date(s)
No earlier than 11/10/16 for manual/mail

8c. Time(s)
TBD for manual/by mail with two-week deadline

8d. Location(s)
Pomona, CA for manual and by mail

8e. Eligibility Period (e.g. special eligibility formula)
Special eligibility formula TBD

8f. Last Payroll Period Ending Date
TBD

8g. Length of payroll period.
☒ Weekly ☐ Biweekly ☐ Other (specify length)

8. Representative who will accept service of all papers for purposes of the representation proceeding **Kenneth D. Sulzer**

9a. Full name and title of authorized representative
Kenneth D. Sulzer, Attorney

9b. Signature of authorized representative
/s/ Kenneth D. Sulzer

9c. Date
10/27/2016

9d. Address (Street and number, city, state, and ZIP code)

1800 Century Park East, Suite 600, Los Angeles, CA 90067

9e. e-Mail Address

ksulzer@constangy.com

9f. Business Phone No.:
(310) 909-7775

9g. Fax No.:
(424) 320-0699

9h. Cell No.:
(310) 600-1153

WILLFUL FALSE STATEMENTS ON THIS STATEMENT OF POSITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. Code, Title 18, Section 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

NATIONAL LABOR RELATIONS BOARD

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME: National Hot Rod Association (NHRA) CASE NUMBER: 22-RC-186622

1. IS YOUR ENTITY A LEGAL ENTITY (As filed with State and/or filed in legal documents forming entity)?

National Hot Rod Association

2. TYPE OF ENTITY: ☒ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)

3. IF A CORPORATION, STATE OF INCORPORATION OR FORMATION: California B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES: 2035 Financial Way, Glendora, CA 91741

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS: N/A

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR: N/A

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (To whom, how, and for what purpose do you provide goods or services?): Drag Racing Organization

7. A. PRINCIPAL LOCATION: Glendora, California B. BRANCH LOCATIONS: Multiple

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED: A. Total: Unknown B. At the address involved in this matter:

9. DURING THE MOST RECENT YEAR, CHECK ONE: ☒ CALENDAR YEAR ☐ FISCAL YEAR

10. A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$ X B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$ C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$

H. Gross Revenues from all sales or performance of services (Check the largest amount): ☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.

I. Did you begin operations within the last 12 months? If yes, specify date: Not applicable No No

11. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING? ☐ YES ☒ NO (If yes, name and address of association or group).

12. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS:

NAME: Kenneth D. Sulzer TITLE: Attorney E-MAIL ADDRESS: ksulzer@constangy.com TEL. NUMBER: 310-909-7775

13. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE:

NAME AND TITLE (Type or Print): Kenneth D. Sulzer, Attorney SIGNATURE: /s/ Kenneth D. Sulzer E-MAIL ADDRESS: ksulzer@constangy.com DATE: 10/27/2016

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

INITIAL LIST (Filed with Statement of Position)

Employer Name: National Hot Rod Association (NHRA)

Case No. 22-RC-186622

Attachment B: Employees in Petitioned-for Unit

Employee Name	Work Location or State of Residence	Shift	Job Classification
1. Adams, Jeffrey M	GA		HC Hard Camera
2. Amos, Jesse D	FL		HH Handheld Camera
3. Ampil, Glenn M	CA		UTE Utility
4. Arce Jr, Jessie A	TX		UTE Utility
5. Arce, Jessie E	TX		UTE Utility
6. Armstrong, Melissa	TN		AD Associate Director
7. Arnold, Tyler	TN		UTE Utility
8. Ashby, Debra	AZ		A2 Audio Assistant
9. Baril, Robby	WI		UTE Utility
10. Baron, Michael S	NJ		UTE Utility
11. Barsamian, Kenneth G	CA		HH Handheld Camera
12. Beck, Ryan	AZ		UTE Utility
13. Bettermann, Nolan	MN		UTE Utility
14. Berger, Joseph	AL		UTE Utility
15. Bojorquez-Gouveia, Richard D	CA		UTE Utility
16. Bombe, Kaard	AZ		UTE Utility
17. Boughan, Charles T	NV		UTE Utility
18. Boyd, De'Von	CA		UTE Utility
19. Boyd, Gilbert P	WA		UTE Utility
20. Boyd, Sean	CA		UTE Utility
21. Boughan, Charles T	NV		UTE Utility
22. Bracken, Robert	MN		EVS Relay Operator
23. Breitzkreutz, Jonathan	KS		UTE Utility
24. Brooks, Kerry	NY		EVS Relay Operator
25. Brown, Justin	MA		UTE Utility
26. Bruneau, James	WY		Bug Operator
27. Bumgarner, Joshua	NC		HH Handheld Camera
28. Burke, Matthew	AZ		UTE Utility
29. Burns, Gene	PA		UTE Utility
30. Butler, Rodney	NC		HH Handheld Camera
31. Byrd Jr, Bobby J	TX		UTE Utility
32. Camacho, Jeff	OH		UTE Utility
33. Cash, Zach P	IL		UTE Utility
34. Castaneda, Paul A	MO		UTE Utility
35. Castillo, Jose J	TX		UTE Utility
36. Carroll III, Thomas	NJ		UTE Utility/EVS Relay Operator

Employee Name	Work Location or State of Residence	Shift	Job Classification
37. Casteris, George	FL		PRD Video Board
38. Chandler, Catherine	MA		UTE Utility
39. Chilcher, Johnny	AZ		UTE Utility
40. Cliburn, Donald G	FL		UTE Utility
41. Colonna, Jerold	NJ		UTE Utility
42. Colonna, James	NJ		UTE Utility
43. Colston, Greg	TX		UTE Utility
44. Couch, Charles H	MI		HC Hard Camera
45. Cruz, Louis	TX		UTE Utility
46. Daceus, Lovens	NJ		UTE Utility
47. Dean, James	AZ		EVS Relay Operator
48. DeLuca, Nigel J P	IL		UTE Utility
49. Demallistre, Ed	MA		UTE Utility
50. Dorleans, David L	GA		UTE Utility
51. Eaton, Robert L	NC		EVS Relay Operator
52. Finley, Julie	FL		UTE Utility
53. Fleming, Ana	NC		AD Associate Director
54. Flowers, Myron	WA		UTE Utility
55. Forster, Peter	WA		UTE Utility
56. Fort, Stephen	CO		HH Handheld Camera
57. Fourzan II, Rico	CO		HC Hard Camera
58. Franklin, Joshua	NC		UTE Utility
59. Furney, Laura K	KS		HC Hard Camera
60. Ford, Matthew	NC		GPSC Graphics Coordinator
61. Franklin, Jerett M	NC		HH Handheld Camera
62. Franklin, Joshua	NC		UTE Utility
63. Garrett, Errik	CA		UTE Utility
64. Geld, Zach	TX		UTE Utility
65. Gentry, Trevor	NC		UTE Utility
66. Griffin, Braxton S	NC		UTE Utility
67. Gause, Justin	IN		HC Hard Camera
68. Geld, Zach	TX		UTE Utility
69. Gibowicz, Patricia	SC		VIZ Graphics Operator
70. Glass, Timothy	CA		HC Hard Camera
71. Green, Stephen S	NC		HH Handheld Camera
72. Greenawalt, Sage R	AZ		UTE Utility
73. Hack, Danny	TX		UTE Utility
74. Haddad, Maysun N	MI		A2 Audio Assist
75. Hamberg, David W	MO		UTE Utility
76. Harper, Theresa L	FL		VIZ Graphics Operator

Employee Name	Work Location or State of Residence	Shift	Job Classification
77. Ham, Jessica	CO		UTE Utility
78. Hamsik, David M	IL		UTE Utility
79. Harward, Zach	NC		UTE Utility
80. Haug, Brian	CO		UTE Utility
81. Heavisides, Andrew	CT		HH Handheld Camera
82. Hein-Molina, Antonio E	CA		UTE Utility
83. Heinz, Steven N	SC		HH Handheld Camera
84. Helling, Nick	CO		EVS Relay Operator
85. Helms, Timothy J	MN		UTE Utility
86. Hemenway, Steve	CA		UTE Utility
87. Hicks, Joey	MO		UTE Utility
88. Hornberger, Joseph	TX		HH Handheld Camera
89. Huber, Terry	IN		UTE Utility
90. Huff, Matthew D	CA		A2 Audio Assist
91. Hooks, Keith C	TX		A2 Audio Assist
92. Janke, John M	IN		UTE Utility
93. Jackels, Joseph G	WI		UTE Utility
94. Jackson III, Darryl V	CA		UTE Utility
95. Jerman, John J	AZ		UTE Utility
96. Jones, Bryan	KS		UTE Utility
97. Jackels, Joseph G	WI		UTE Utility
98. Johnston, Garrett	VA		EVS Relay Operator
99. Jones, Korey	AZ		UTE Utility
100. Joyal, Travis R	MA		UTE Utility
101. Journee, Wayne	WA		UTE Utility
102. Katen, Michael	SD		V2 Video Operator
103. Keith, Jay P	TN		UTE Utility
104. Kenny Jr, Dennis M	FL		A2 Audio Assist
105. Kent, Paul	MI		EVS Relay Operator
106. Kirk, Douglas	GA		HH Handheld Camera
107. Kiser Jr, Ben H	NC		UTE Utility
108. Knauer, Cathleen E	NJ		VIZ Graphics Operator
109. Kieth, Jim	TN		UTE Utility
110. King, Sharon K	MO		UTE Utility
111. Kirby, Mike	FL		VIZ Graphics Operator
112. Kristofice, Darin	AZ		UTE Utility
113. Kruse, David	CA		UTE Utility
114. Kuczkowski, Laura	CO		UTE Utility
115. Lafazan, Lori D	NJ		VIZ Graphics Operator
116. Lamb, Andrea	AZ		UTE Utility
117. Laskey, Paul A	MN		EVS Relay Operator
118. Lazar, Francic A	NJ		HH Handheld Camera

Employee Name	Work Location or State of Residence	Shift	Job Classification
119. Lechner, Michael	NJ		HC Hard Camera
120. Logan, Robert M	MI		HC Hard Camera
121. Lopez, Nathan abel	TX		UTE Utility
122. Lorentz, Jennifer	CO		VIZ Graphics Operator
123. Larway, Don	TX		HC Hard Camera
124. Lester, Matthew	TX		V2 Video Operator
125. Littlejohn, Levonte	WA		UTE Utility
126. Logan, Tim J	TX		UTE Utility
127. Lubben, Jimmy R	IL		UTE Utility
128. Lucas, Scott J	MA		UTE Utility
129. Luiten, Christopher C	CA		UTE Utility
130. Major, Marcus	AZ		UTE Utility
131. Mari, Edwin T	CA		HC Hard Camera
132. Martin, Thomas D	FL		VIZ Graphics Operator
133. Massa, Bryan	CA		UTE Utility
134. May, Steve	TN		UTE Utility
135. Mayer, Doug	NC		HH Handheld Camera
136. McCoy, Darrien D	OH		UTE Utility
137. McBride, Gordon	CA		TD Technical Director
138. McJennett, Thomas W	MI		A1 Audio Lead
139. McLaughlin, Brandon	MO		UTE Utility
140. McNeil, Michael A	CO		V2 Video Operator
141. Mellinger, Joshua D	CA		Video Assist
142. McInnis, Dylan S	NC		UTE Utility
143. Meagher, Julia R	CA		UTE Utility
144. Moore, Stephen G	FL		UTE Utility
145. Morris, Nathan	WA		UTE Utility
146. Moxley, Jimmie R	FL		UTE Utility
147. Moxley, Mark D	FL		UTE Utility
148. Munaco, Sean	MO		V1 Senior Video
149. Murray, Kevin T	FL		UTE Utility
150. Navarro, Nelson A	NY		EVS Relay Operator
151. Nelson, Scott	IA		EVS Relay Operator
152. Na, Steve	NV		HH Handheld Camera
153. Nelson, Ben	NC		VIZ Graphics Operator
154. Newman, Alexander S	CA		GPSC Graphics Coordinator
155. Onuska, Stephen M	NC		A2 Audio Assist
156. Oberto, Scott	CO		UTE Utility
157. O'Leary, Ryan C	NJ		UTE Utility
158. Owen, Lindsey	TN		UTE Utility
159. Panek, Michael	IL		HH Handheld Camera
160. Pappademos, Michael C	FL		EVS Relay Operator

Employee Name	Work Location or State of Residence	Shift	Job Classification
161. Pardo, Gary C	AZ		UTE Utility
162. Pauley, Ed	NC		UTE Utility
163. Peacock, Christopher	FL		HC Hard Camera
164. Pendleton, Branden T	TX		UTE Utility
165. Phillips Jr, Robert W	CA		HH Handheld Camera
166. Piner, Joshua A	NC		GPSC Graphics Coordinator
167. Phelps, Hayley R	FL		UTE Utility
168. Phillips, Thomas	MO		A2 Audio Assist
169. Post, Joseph	AZ		UTE Utility
170. Power, Kevin J	NJ		UTE Utility
171. Reaves, Franky D	GA		HH Handheld Camera
172. Reeves, Stephen A	AL		EVS Relay Operator
173. Pruitt, Kenneth J	MO		V1 Senior Video
174. Pyle, Benjamin C	MS		VIZ Graphics Operator
175. Rhoades, David	MI		HC Hard Camera
176. Rhoades, Gavin C	MI		UTE Utility
177. Roark, Russell	TN		SUB Sub Mixer
178. Roberts, John M	FL		UTE Utility
179. Roberts, Joshua	FL		UTE Utility
180. Ruth, Thomas	MA		V2 Video Operator
181. Robertson, William A	IN		UTE Utility
182. Rumsey, Tery	NH		HC Hard Camera
183. Ruttan, Parker J	CA		UTE Utility
184. Ryder, James	PA		UTE Utility
185. Salas, Luca R	NJ		UTE Utility
186. Scheetz, Robb E	FL		A2 Audio Assist/A1 Audio Lead
187. Schwartzbach, Steve	NC		UTE Utility/ RNR Runner/
188. Seeley, Jeffrey	CT		HC Hard Camera
189. Segui, William	FL		HH Handheld Camera
190. Smith, Abby M	MD		VIZ Graphics Operator
191. Smith, Marc J	AZ		A2 Audio Assist
192. Snyder, Paul B	CA		UTE Utility
193. Spearman, Nate	GA		HH Handheld Camera
194. Starcer, David	CO		UTE Utility
195. Stefanyshyn, Pete	MA		HH Handheld Camera
196. Steixner, Hannes	KS		UTE Utility
197. Stewart, Josh	PA		UTE Utility
198. Stoll, Catherine M	NV		AD Satellite Feed
199. Svenson, Chris	NH		HC Hard Camera/UTE

Employee Name	Work Location or State of Residence	Shift	Job Classification
			Utility
200. Svenson, Steven B	MA		UTE Utility
201. Swaine, David	NY		EVS Relay Operator
202. Symanovich, Kathryn	TX		V1 Senior Video
203. Tagay, Jan Carol	CA		UTE Utility
204. Tedesco, Stephen T	CO		UTE Utility
205. Thing, Wayne	TN		TD Technical Director
206. Thomas, Joseph S	FL		UTE Utility
207. Tickle, Larry	PA		UTE Utility
208. Tolbert, Justin T	CA		GPSC Graphics Coordinator
209. Tolpen, Bradley S	MO		UTE Utility
210. Tuska, Jason R	KY		A2 Audio Assist
211. Tyson, Robert M	SC		UTE Utility
212. Ullman, Trevor	CO		UTE Utility
213. Velasquez, Richard S	CA		UTE Utility
214. Veney, Todd	IN		PRD Pit Producer
215. Wachter, James	FL		HH Handheld Camera
216. Wampler, Brian J	AL		V2 Video Operator
217. Ward, Patrick Kennedy	MI		A2 Audio Assist
218. Webster, Dietrick	CO		UTE Utility
219. Wiggins Jr, Michael A	IL		UTE Utility
220. Wittig, Bo	WA		UTE Utility
221. Woods, Jeanne M	NH		UTE Utility
222. Wright, Allan	TX		UTE Utility
223. York, Richard	CO		UTE Utility
224. Zielinski, David J	IL		UTE Utility

INITIAL LIST (Filed with Statement of Position)

Employer Name: National Hot Rod Association (NHRA) **Case No.** 22-RC-186622

Attachment C: Employees to be Added to Petitioned-for Unit

Employee Name	Work Location or State of Residence	Shift	Job Classification
1. Adkison, Carolyn A	OH		RNR Runner
2. Boyd, De'Sean L	CA		RNR Runner
3. Bradford, Chasitie	GA		RNR Runner
4. Desrochers, Brittany H	NH		RNR Runner
5. Dullea, Veronica M	NV		RNR Runner
6. Elferink, Andre A	CA		RNR Runner
7. English, Timothy	TX		RNR Runner
8. Etchison Jr, Andra L	CA		RNR Runner
9. Freeman, Shawn H	SC		RNR Runner
10. Gibson, Angelina	GA		RNR Runner
11. Green, Todd A	TX		RNR Runner
12. Hernandez, Raymond M	AZ		RNR Runner
13. Herndon, Shavonne	TX		RNR Runner
14. Kidd, Melissa	OH		RNR Runner
15. Kilbury, Kelsey T	CA		RNR Runner
16. King, Brandy	AZ		RNR Runner
17. Leaf, Ed	CO		RNR Runner
18. Lentowski, Noreen	AZ		RNR Runner
19. Long, Quinton L	FL		RNR Runner
20. Michaels, Suzzanne	NV		RNR Runner
21. Pearson III, Mike W	NV		RNR Runner
22. Perez, Steve	MO		RNR Runner
23. Sainvil, Junior	GA		RNR Runner
24. Salas, Jud S.	NV		RNR Runner
25. Schindele, Desiree	MN		RNR Runner
26. Shelby, Brittany	OH		RNR Runner
27. Soule, Mark E	FL		RNR Runner
28. Spencer, Teresa D	NC		RNR Runner
29. Thomas, Tacairon	FL		RNR Runner
30. Treadway, Elizabeth	AZ		RNR Runner
31. Whipple, Jonathan	AR		RNR Runner
32. Williams, Marva T	GA		RNR Runner
33. Worby, Mitchell	WA		RNR Runner

Attachment D: Names of Employees to be Excluded from Petitioned-for Unit*

Employee Name
1. *Unknown at the present time given the overbreadth and vagueness of the Union's petitioned-for unit. Any employee who is a supervisor or professional employee under the Union's proposed unit must be excluded for it to be appropriate. Further, the NHRA does not employ any individuals in the stage manager classification, and therefore, it should not be among the listed classifications within the petitioned-for unit. In addition, the Employer hereby reserves its right to exclude additional employees from the unit if and when the Union clarifies the full complement of employees it seeks to represent.
2.
3.
4.

ATTACHMENT E

ISSUES FOR THE PRE-ELECTION HEARING:

EMPLOYER'S POSITIONS

1. The Board must apply a special voter eligibility formula based on the one devised in *American Zoetrope Productions*, 207 NLRB 621 (1973), as modified below, to determine the eligibility of employees to vote in any election. Under this modified formula, employees in the petitioned-for unit who worked at least one NHRA event over the 2016 race season (i.e., February 2016 to November 2016) would be eligible to vote and the number of employees in the proposed unit would be increased from 60 to approximately 257. There are special circumstances here that justify the use of this alternative eligibility standard, namely (1) the nature of the NHRA's regional and seasonal television broadcast operations and (2) the employment pattern of the employees in the petitioned-for unit. Put slightly differently, there are many broadcast technicians who work for the NHRA on a consistent but fragmented basis, for instance, every March at the Gainesville, FL race, and a formula must be utilized which allows these employees to vote because they have a genuine and legitimate interest in terms and conditions of employment relative to the NHRA's workplace. The Employer anticipates that the Union will argue for a more restrictive formula which disenfranchises the full group of petitioned-for employees from voting in any election.

In crafting an appropriate voter eligibility formula, the Board encourages use of a formula that facilitates optimal employee enfranchisement without extending voting privileges to employees who do not possess a real continuing interest in the employer's terms and conditions of employment. *Steppenwolf Theatre Co.*, 342 NLRB 69 (2004); *Trump Taj Mahal Casino*, 306 NLRB 294 (1992), *enf'd*, 2 F.3d 35 (3d Cir. 1993); *American Zoetrope Productions*, 207 NLRB 621 (1973). Indeed, Board law allows a great deal of flexibility in devising an appropriate formula, especially in the entertainment industry, that will ensure that those employees who have a legitimate "continuing interest in terms and conditions of employment offered by the employer" are eligible to vote. *See, e.g., Trump Taj Mahal Casino*, 306 NLRB at 296; *see also American Zoetrope Productions*, 207 NLRB at 623 (film and sound editor employees were eligible to vote where they worked two productions over a one-year period); *DIC Entertainment, L.P.*, 328 NLRB 660 (1999), *enf'd*, 238 F.3d 434 (D.C. Cir. 2001) (employees were eligible where they worked two productions totaling 5 days in a single year or at least 15 days over a one-year period); *The Julliard School*, 208 NLRB 153 (1974) (two productions for a total of 5 days over a one-year period or at least 15 days over a two-year period); *Kansas City Repertory Theatre, Inc.*, 356 NLRB No. 28 (2010) (same).

In this case, the application of a modified *American Zoetrope Productions* formula will allow for optimal employee enfranchisement and free choice in any election by giving a vote to employees who are employed by NHRA on at least one production from race season to race season. The NHRA's regional and seasonal television broadcast operation and the employment patterns of broadcast technicians support using this formula.

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National Hot Rod Association (NHRA),
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NHRA's television broadcasts are unique, even among productions in the entertainment industry, in that they are produced from 24 large professional events, one or twice a month, that occur in cities around the country, including in Charlotte, NC; St. Louis, MO; Reading, PA; Dallas, TX; Las Vegas, NV; and Indianapolis, IN, among other cities. The locations of the races are mostly static from year to year and are based on the locations of the race tracks. (A copy of the 2016 race schedule is enclosed.) To staff the television production operation at each race, the NHRA typically hires broadcast technicians who reside in or near a city where a race is being held. These employees then work the particular event for one or more days and then are technically laid off until next season or the next race in that particular city. In many cases, broadcast technicians work one or two events near their homes, sometime for three or four days, 13 hours per days, and then do not continue to work at other shows during the rest of the race season. These same technicians, however, typically return from season to season to once again work at one, two or more NHRA races, often regionally. Therefore, all broadcast technicians – whether they work one or more races per season – have a sufficient regularity of employment with the NHRA. In view of that and consistent with the Board's flexible voting formula policy, the Region should conclude that a modified *American Zoetrope Productions* formula would most effectively protect the rights of the NHRA's broadcast technicians. This formula will ensure that employees who work primarily for one or more races, every year, are not now deprived of their vote merely because the most recent NHRA races have been held in certain cities as opposed to others or because an employee has not worked the last few months.

The Employer is aware that the Board traditionally uses the *Davison-Paxon*, 185 NLRB 21 (1970), formula to determine the eligibility of intermittent or temporary employees like the broadcast technicians here. Under this formula, intermittent employees are eligible to vote if they regularly average 4 or more hours of work per week during the last quarter preceding the eligibility date. However, applying such a formula here would be inappropriate and unduly restrictive because it would arbitrarily favor broadcast technicians who worked in the last quarter, excluding from voting certain employees who may have worked multiple events in the beginning of the season and who otherwise have a reasonable expectation of continued employment for the upcoming 2017 season. In other words, application of the *Davison-Paxon* formula would disenfranchise employees who regularly work at races close to home in the beginning of the season, but do not return to work at additional races farther away from home later in the year. As just one example, a broadcast technician who worked 6 events over the course of the 2016 season might be excluded under the *Davison-Paxon* because she did not regularly average 4 hours or more per week in the last 3 months (i.e., September, August and July). Under the *Davison-Paxon* formula, this individual would be deprived of an opportunity to vote, although she otherwise has a legitimate right to decide whether to be represented by a union in any election, has worked at several NHRA events, and has a reasonable expectation of future reemployment for 2017. The *American Zoetrope Productions* standard is best suited for the factual circumstances of the

NHRA's regional and seasonal television production operation. It guarantees that broadcast technicians, the majority of whom work intermittently and seasonally based on their proximity to a particular NHRA race, are eligible to vote.

In addition, under the modified *American Zoetrope Productions* standard, the Employer asserts that the Union does not have a sufficient showing of interest to support a direction of an election.


















2. The employees in the RNR Runner classification share an overwhelming community of interest with the broadcast technicians included in the petitioned-for unit and must be added to the unit in order for it be appropriate. Together with the broadcast technicians, employees in the RNR Runner classification function as a single television production department or television production operation. ~~The television production operation is~~ responsible for setting up, maintaining and operating the audio, video and graphics equipment used to transmit live and recorded broadcasts of NHRA events around the United States. RNR Runners' job duties overlap with the job duties of utility technicians (UTE Utility classification), who are already included in the petitioned-for unit, and RNR Runners and utility technicians generally share a similar skill set and level of experience. Although RNR Runners perform odd jobs such as fetching and carrying audio and video equipment or craft services, they are functionally integrated with broadcast technicians, working under the same conditions and reporting to the same producers and directors (i.e., supervisors) as the broadcast technicians.

Further, both broadcast technicians and RNR Runners are paid hourly; receive similar benefits; work similar shifts per season; and are subject to the same Employer policies. RNR Runners and broadcast technicians also perform complimentary and overlapping tasks during any given racing event. Indeed, many individuals who begin their careers as RNR Runners subsequently go on to perform jobs as utility technicians and even audio technicians or camera operators after sufficient on-the-job training. To that end, RNR Runners step in to perform duties as broadcast technicians during broadcasts, such as assistant producers or audio technicians (i.e., A1) when needed. Under these circumstances, it would be inappropriate to exclude RNR Runners from the proposed unit. There is no reliable basis for excluding one classification in the television production department—RNR Runners—and including all other classifications in that same department, particularly the utility technicians.

3. The Stage Manager classification and the employees who fall within the Union's "others in similar technical positions performing work, including pre-production, production and post-production" language must be excluded from the petitioned-for unit. First, the NHRA does not employ employees in the classification of "stage manager." Second, and more significantly, the Union's inclusion of the catch-all "others in similar technical positions" language is inappropriate, overbroad and vague. The Employer is unable to determine for

certain which employees may or may not fall within the scope of the petitioned-for unit. Based on this language, however, supervisors and/or professional employees will likely be included within the petitioned-for unit. In addition, because of this overbreadth, the Employer is unable to specify the names and classifications of employees to be excluded from the petitioned-for unit in order to make it appropriate.

4. The Union seeks to represent "[a]ll broadcast technicians employed by NHRA including technical directors, creative directors, assistant directors, assistant producers, camera operators (stationary, hand held and/or remotely operated camera), audio technicians (A1), audio assistants (e.g., Sub Mixers, A2), replay producers, videotape operators, digital recording device operators (e.g., EVS), video technicians, video technicians assistants, graphics operators, graphics coordinators, bug operators, utility technicians, stage managers, and others in similar technical positions performing work, including pre-production, production and post-production, in connection with the telecasting of live or recorded automobile racing events at remote locations; but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act." As noted above, the Employer contests this description of the unit as it is overly broad and indefinite as to the potential employees included. As such, the Employer requests clarification from the Board and Union, and will seek to narrow or modify this description at the pre-election hearing.
5. The Board violated the Act and denied the Employer due process by failing to issue and serve the Union's Notice of Petition and other required documents to the Employer in a timely fashion as required by Section 102.63(a) of the Board's Rules and Regulations.
6. As noted in the Employer's October 25 and 26, 2016 correspondence to the Region, the Employer objects to the location and date of the pre-election hearing. Without restating the reasons asserted in the letter but incorporating them here by reference, the Employer once again objects to the hearing's location in Newark, NJ and renews its request for a transfer of the petition to Region 31 in Los Angeles, CA.
7. An election, if any, must be conducted by mixed manual and mail-ballot, not mail-ballot only as the Union contends. The NHRA has its final race of the year in Pomona, California from November 10 through November 13, 2016, where over 40 broadcast technicians will be working and there will be time to schedule a manual vote. In addition, for the remaining approximately 217 employees in the petitioned-for unit, the Employer will agree to an election by mail-ballot. Board law favors manual elections and mail balloting is used only in *unusual circumstances* where a manual election is impracticable. See NLRB Outline of Law and Procedure in Representation Cases, April 16, 2013, 24-427 Mail Ballots, p. 345. In this case, a manual election is only impracticable as to the petitioned-for unit employees who will not be working at the Pomona, California race. Accordingly, a mail-ballot only election is not necessary or appropriate.

2016 NHRA Mello Yello Drag Racing Series Schedule		
Feb. 11-14	Circle K NHRA Winternationals	Pomona, CA
Feb. 26-28	CARQUEST Auto Parts NHRA Nationals	Phoenix, AZ
March 17-20	Amalie Motor Oil NHRA Gatornationals 	Gainesville, FL
April 1-3	DENSO Spark Plugs NHRA Nationals	Las Vegas, NV
April 22-24	NHRA Four-Wide Nationals 	Charlotte, NC
April 29-May 1	NHRA Spring Nationals	Houston, TX
May 13-15	Summit Racing Equipment NHRA Southern Nationals 	Atlanta, GA
May 20-22	NHRA Kansas Nationals	Topeka, KS
June 3-5	NHRA New England Nationals	Epping, NH
June 9-12	NHRA Summernationals 	Englishtown, NJ
June 17-19	NHRA Thunder Valley Nationals	Bristol, TN
June 23-26	Summit Racing Equipment NHRA Nationals 	Norwalk, OH
July 7-10	K&N Filters Route 66 NHRA Nationals 	Chicago, IL
July 22-24	Mopar Mile-High NHRA Nationals 	Denver, CO
July 29-31	Toyota NHRA Sonoma Nationals 	Sonoma, CA
Aug. 5-7	NHRA Protect the Harvest Northwest Nationals	Seattle, WA
Aug. 18-21	Lucas Oil NHRA Nationals 	Brainerd, MN
Aug. 31-Sept. 5	Chevrolet Performance U.S. Nationals 	Indianapolis, IN
Sept. 16-18	NHRA Carolina Nationals 	Charlotte, NC
Sept. 23-25	AAA Insurance NHRA Midwest Nationals 	St Louis, MO
Sept. 29 - Oct 2	Dodge NHRA Nationals 	Reading, PA
Oct. 13-16	AAA Texas NHRA Fall Nationals 	Dallas, TX
Oct. 27-30	NHRA Toyota Nationals 	Las Vegas, NV
Nov. 10-13	Auto Club NHRA Finals 	Pomona, CA
 = Pro Stock Motorcycle event		

ATTACHMENT 3

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
STIPULATED ELECTION AGREEMENT

National Hot Rod Association (NHRA)

Case 22-RC-186622

The parties **AGREE AS FOLLOWS:**

1. PROCEDURAL MATTERS. The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

2. COMMERCE. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

The Employer, National Hot Rod Association (NHRA), is a California corporation engaged in the business of sanctioning drag racing with its headquarters in 2035 Financial Way, Glendora, California facility, the only facility involved herein. During the preceding twelve months, the Employer derived gross revenue in excess of \$500,000. During the same period of time, the Employer in conducting its operations performed services valued in excess of \$50,000 in States other than the State of California.

3. LABOR ORGANIZATION. The Petitioner is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

4. ELECTION. A secret-ballot election under the Board's Rules and Regulations shall be held under the supervision of the Regional Director on the date and at the hours and places specified below.

The election will be conducted by mail. The ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 22; on Tuesday, November 15, 2016. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 22 office by 5:00 p.m. on Wednesday, November 30, 2016. The mail ballots will be counted at the Region 22 office located at 20 WASHINGTON PLACE, 5th FLOOR, NEWARK, NJ 07102-3127 at 10:00 a.m. on Friday, December 2, 2016.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region 22 office by no later than 5:00 p.m. on Tuesday, November 22, 2016 in order to arrange for another mail ballot kit to be sent to that employee.

5. UNIT AND ELIGIBLE VOTERS. The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All broadcast technicians employed by the National Hot Rod Association ("NHRA") including technical directors (TD Technical Director), associate directors (AD Associate Director, AD Satellite Feed), assistant producers (PRD Pit Producer, PRD Video Board), camera operators (HC Hard Camera, HH Handheld Camera), audio technicians (A1 Audio Lead), audio assists/assistants (A2 Audio Assist, SUB Sub Mixer), replay producers, videotape operators, digital recording device operators (EVS Replay Operator), video technicians (V1 Senior Video, V2 Video Operator), video technician assistants (Video Assist), graphics operators (VIZ Graphics Operator), graphics coordinators (GPSC Graphics Coordinator), bug operators (Bug Operator), runners (RNR Runner),

Initials: _____

and utility technicians (UTE Utility) performing work in connection with telecasting of live or recorded racing events at remote locations; but excluding all office clerical employees and professional employees, guards, and supervisors as defined in the Act, and all other employees.

ELIGIBILITY - Those eligible to vote are all employees in the bargaining unit classifications who have been employed by the Employer during two events for a total of 40 or more working hours over the 2016 racing season.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls or by mail as described above in paragraph 4.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

6. VOTER LIST. Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. The font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties (at ahealy@iatse.net). The Employer must file with the Regional Director a certificate of service of the list on all parties.

7. THE BALLOT. The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of the need to have the Notice of Election and/or ballots translated.

The question on the ballot will be "Do you wish to be represented for purposes of collective bargaining by INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, AFL-CIO?" The choices on the ballot will be "Yes" or "No"

8. NOTICE OF ELECTION. The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least three (3) full working days prior to 12:01 a.m. of the day of the election. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

Initials: _____

9. NOTICE OF ELECTION ONSITE REPRESENTATIVE. The following individual will serve as the Employer's designated Notice of Election onsite representative: (Insert onsite representative details including that person's full name, job title, physical location, e-mail address and facsimile number).

10. ACCOMMODATIONS REQUIRED. All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

11. OBSERVERS. Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally.

12. TALLY OF BALLOTS. Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

13. POSTELECTION AND RUNOFF PROCEDURES. All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

NATIONAL HOT ROD ASSOCIATION (NHRA)
(Employer)

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, AFL-CIO
(Petitioner)

By /s/ Daniel Murphy, Esq. 11/2/2016
(Name) (Date)

By /s/ Adrian Healy, Esq. 11/2/2016
(Name) (Date)

(Union)

By _____
(Name) (Date)

Recommended: /s/ Eric Pomianowski 11/2/2016
ERIC POMIANOWSKI, (Date)

Date approved: November 3, 2016

/s/ Richard Fox
Acting Regional Director, Region 22
National Labor Relations Board

EXHIBIT B

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

National Hot Rod Association (NHRA)

Employer

and

Case 22-RC-186622

International Alliance of Theatrical Stage Employees
(IATSE)

Petitioner

NOTICE TO SHOW CAUSE

On November 3, 2016, the Acting Regional Director approved a stipulated election agreement in the above-captioned case.

On December 15, 2017, the Board issued its decision in *PCC Structural, Inc.*, 365 NLRB No. 160, overruling *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), concerning the standard for determining whether a proposed bargaining unit constitutes an appropriate unit for collective bargaining when a party contends that the smallest appropriate unit must include additional employees.

In view of the decision in *PCC Structural*, NOTICE IS HEREBY GIVEN that cause be shown, in writing, filed with the Regional Director in Region 22, Newark, New Jersey on or before February 16, 2018, why unusual circumstances do not exist to warrant allowing either party to withdraw from the Agreement. See ULP Casehandling Manual, §11097.

Any party responding to this Notice to Show Cause must address:

- Whether the appropriateness of the bargaining unit in this case is impacted by the *PCC Structural, Inc.* decision?
- Any party which answers this question in the affirmative must submit contemporaneously an offer of proof, identifying any facts regarding community-of-interest factors that would lead to a different description of the bargaining unit than that set forth in the present stipulated agreement. The offer of proof must identify with significant specificity those community of interest factors a party is relying upon to show that the stipulated unit is not sufficiently distinct from another employee group such that it should be rendered inappropriate.

Any submission in response to this Notice to Show Cause will constitute a motion for reconsideration of the underlying stipulated agreement and should be served on the other Party(ies) to this matter.

Dated: February 2, 2018



David E. Leach III, Regional Director
National Labor Relations Board, Region 22
Veterans Administration Building
20 Washington Place, 5th Floor
Newark, NJ 07102